

Disciplinary Panel Hearing

Case of

Mr Steven Noel Kindred MRICS

UK

On

Wednesday 26 April 2023

Panel

Paul Watkinson (Surveyor Chair)

Sue Heads (Lay Member)

Jane Bishop (Lay Member)

Legal Assessor

Alastair McFarlane

The charge against Mr Kindred is:

Between 1 January 2021 and 1 February 2022, you have failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) in that you have not completed and recorded, or caused to be recorded, at least 20 hours of CPD on the RICS CPD portal.

**Contrary to Rule 6 of the Rules of Conduct for Members 2007 version 7
Mr Kindred is therefore liable to disciplinary action under Bye-law 5.2.2.**

BACKGROUND

1. Mr Kindred MRICS has been a professional Member of RICS since January 2001.
2. All Members of RICS are required to undertake a minimum of 20 hours of Continuing Professional Development (CPD) each calendar year. Of the minimum 20 hours CPD, at least 10 hours must be formal CPD. The remainder can be informal CPD. Members must not only complete the minimum required number of hours of CPD but must record their CPD activity online by signing into a secure portal. The activity must be recorded with RICS by 31 January of the following year.
3. RICS' case is that by 31 January 2022, Mr Kindred had failed to record any hours of CPD for the calendar year 1 January 2021 to 31 December 2021.
4. Mr Kindred has breached the requirements of Rule 6 of the Rules on two previous occasions.
5. Mr Kindred first breached the Rules in 2017 and was given a caution.
6. Mr Kindred breached the Rules for the second time in 2019 and was given a caution and a fine. This fine was not paid until recently.
7. No CPD was recorded for the 2021 CPD year and Mr Kindred did not hold any relevant concessions. This breach, if proved, is Mr Kindred's third breach in a 10-year period.
8. RICS sent Mr Kindred an email on 7 June 2022 regarding his noncompliance

with CPD requirements.

9. Mr Kindred responded on 13 June 2022 stating that it had been difficult to maintain formal CPD through the pandemic and beyond as a sole practitioner.
10. RICS called and left a voicemail for the Member on 5 August 2022. RICS sent a further email on 5 August 2022. The Member responded on 5 August 2022 asking for 30 days to bring his CPD record up to date. RICS responded on 8 August 2022 asking for the Member to upload his CPD activity details. This was not done.
11. Mr Kindred sent an email to RICS on 10 January 2023 stating that he was suffering from some stress related health problems which had caused a delay in his responses.
12. Mr Kindred's case was referred to a Single Member of the Regulatory Tribunal. That Single Member, on 17 January 2023, found the charge proved and imposed a sanction.
13. Mr Kindred exercised his right under Rule 115 of the Tribunal Rules, to reject the findings and/or sanction imposed by a Single Member of the Regulatory Tribunal by way of email, on 18 January 2023.
14. Rule 118 of the Tribunal Rules requires this Disciplinary Panel to consider the matter afresh. This is not an appeal by Mr Kindred; Mr Kindred does not bear any evidential burden to prove that the Single Member's decision was wrong. RICS must prove the case and if it is found to be proved this Panel must decide upon the appropriate sanction based solely on the material before it at this hearing.

ISSUES

15. Mr Kindred accepts the following matters:
 - i. He has not recorded any hours of CPD for the period 1 January 2021 to 31 December 2021.
 - ii. That this is his third breach of Rule 6 of the Rules of Conduct within a 10 year period.

RICS SUBMISSIONS

16. RICS submitted that the facts of the breach are proved by Mr Kindred's admission and by the records and that if the Panel is satisfied that Mr Kindred has breached Rule 6 and that it is his third such breach within a 10-year period, then the Panel will need to decide whether Mr Kindred is liable to disciplinary action (Rule 123 (e) of the Tribunal Rules).
17. RICS contended that the requirement for Members of RICS to maintain their professional competence, as demonstrated in part by the completion and recording of CPD, is a core obligation of membership. The seriousness of this allegation is emphasised by the fact that RICS' Sanctions Policy for a third CPD breach clearly states that the matter should be referred to a Single Member or Disciplinary Panel with presumption of expulsion (At paragraph 22.1.c of the RICS Sanctions Policy Version 9 with effect from 2 March 2020) (Tab 7). RICS submits that based on the presumptive sanction

alone, this Panel can be satisfied that Mr Kindred is liable to disciplinary action.

18. If the Panel found there was liability to disciplinary action, RICS submitted that it would have to consider the appropriate sanction that should be imposed. Although paragraph 22.1c of the relevant Sanctions Policy makes clear that the policy for a third CPD breach includes a presumption of expulsion, the Panel will still need to apply the overriding principles set out at paragraph 6 of the Sanctions Policy and, where considering expulsion as a sanction, that paragraph 21.1 of the Sanctions Policy clearly allows for the consideration of extenuating circumstances. RICS submitted that complying with the CPD rule is an important part of being a member of RICS. CPD helps members to stay well informed on trends and changes, ensures that Members are improving in line with others in their fields and enables an optimum service to be provided. RICS need to be able to access the CPD records of their Members to ensure the recording targets are met. RICS uses a portal to do this. Members who do not record the required CPD must be sanctioned or other Members, who dutifully recording their CPD, will not see the benefit in making these efforts and may stop. If the highest standards are not maintained, then there can be no public trust in the RICS membership.

THE MEMBER'S SUBMISSIONS

19. In an email dated 21 February Mr Kindred provided a statement by email where Mr Kindred explained that he operates his own small business and describes the challenges that this brings:

“What I was not prepared for was how much more difficult large fluctuations in demand and workload are to deal with outside the comfort and flexibility of a large organisation with far more resource and back-up to call upon”

“The difference in working environment therefore between a large organisation and a sole practitioner or small practice, are huge and often present incredible challenges to the proprietor.”

20. Mr Kindred also explained the impact of the Covid-19 pandemic on his business stating:

“.....with demand remaining very stable if not increasing at times, so I now found myself at full stretch for a considerable period of time including almost the entirety of 2021 and 2022. This at times had a significant impact on my general health and mental wellbeing.”

21. Mr Kindred addressed specifically his CPD failings stating:

“Nevertheless at times when demand and workload have been at such extreme levels and the servicing of my clients has had to be my priority, I have on occasion taken my eye off other responsibilities, in this instance the recording of CPD. CPD as an activity comes naturally to the nature of my business with new skills, innovations, products and materials being researched on almost a daily basis. Formal CPD however presents more of a challenge to sole practitioners in the absence of a larger company set up with organised events. The shift to online presentation and webinars largely as a result of the effects of the pandemic have now made this more accessible however. CPD has always been part of my general routine, on the occasions I failed to record training there were unfortunately extraordinary spikes in demand around those times.”

“I fully accept the failings on my part that this hearing has been asked to consider, I would however like to stress that these have not in any way been as a result of any impropriety or disregard.”

“The last 3 years in particular have represented one of the steepest and most challenging learning curves I, as many others in my position, have ever faced. Nevertheless, during that period, and motivated largely by the impacts on my wellbeing, I have taken the necessary steps to bring about those difficult changes. It is my hope they forearm me for future challenges and at the same time afford me the necessary assistance to ensure all my professional obligations are met in full.”

22. Mr Kindred also referred to his written witness statement and adopted its contents. He emphasised that he had always completed and recorded his CPD every year, save for the three years when he failed to do so. He explained that he completed the CPD fully but failed to record it in time by 31 January. He described becoming “blinkerred by work” when he was working up to 80 hours a week, which included all the administrative tasks, and missed the deadline. He explained the circumstances of his failure and the impact moving from the structure and support provided by being in a large firm to being a sole practitioner. He indicated that he greatly values his membership of RICS and has taken remedial steps by adopting new structures including taking on a new Practice Manager, whom he referred to as his “safety net” to ensure that such recording failures do not happen again. These changes will be effective at the end of April 2023. He indicated he takes the undertaking and recording of CPD extremely seriously and that he understands the importance of CPD to the profession and to the public. He indicated the grave effect that expulsion would have on him and his company. He sought to persuade the Panel that a lesser sanction would be sufficient and proportionate in all the circumstances. He has been a Member of RICS for over 25 years and has otherwise always completed and recorded his CPD for all those years and that other than these failures, had no other disciplinary matters. He confirmed that the outstanding fine has been paid.

LEGAL ADVICE

23. The Panel received and accepted the advice of the Legal Assessor. The Panel was mindful that the burden of proof of facts in RICS proceedings is upon the RICS, which brings the charges. The standard of proof in RICS disciplinary proceedings is the civil standard, that is the balance of probabilities, meaning that before finding a fact proved, the Panel must be satisfied that it is more likely than not that it occurred.
24. The issue of whether there was liability to disciplinary action was a matter for the Panel's own judgment rather than the legal standard of proof. Before finding liability established, the Panel should be satisfied that the failings in question were of a serious nature and fell far short of the standards expected of RICS members.

DECISION ON FACTS

25. The online CPD print out record was supplied. The Panel noted the evidence of Ms Natasha Reid, an RICS Lead Investigator, dated 31 October 2022, which confirmed that if no entry appeared in the CPD print out for any particular year, this indicated that no CPD had been recorded for that year. The Panel examined the record for Mr Kindred and was satisfied that it showed that he had not recorded the requisite hours of CPD for the year 2021 and that Mr Kindred did not have any relevant concessions for 2021. The Panel also noted Mr Kindred's admission to the Charge.
26. The Panel found the factual allegation proved based on the documentary evidence produced by RICS and on Mr Kindred's admission.

DECISION ON LIABILITY TO DISCIPLINARY ACTION

27. The Panel concluded that the Relevant Person's failure to comply with the CPD requirements and Rule 6 of the Code of Conduct for Members amounted to a serious falling short of his professional obligations. The Panel was satisfied that Mr Kindred had been sent explicit reminders of the requirements from RICS.
28. In any event, it was the Relevant Person's responsibility to ensure he was aware of and complied with his professional obligations regarding CPD. The Panel was concerned that the failure to record CPD tended to undermine public confidence in the profession. Compliance with its rules was a mainstay of proper professional regulation and ensuring public protection. For these reasons the Panel was satisfied that this failure was sufficiently serious to render Mr Kindred liable to disciplinary action.
29. The Panel noted that Mr Kindred accepted that his failure rendered him liable to disciplinary action.

SANCTION

30. The Panel's attention was directed to RICS' Sanctions Policy in respect of CPD breaches. Paragraph 21.1 provides that policy is as follows:
- the appropriate order for a single breach is a Fixed Penalty (Caution);
 - for a second breach within 10 years of receipt of a Caution, a Fixed Penalty (Caution and fine);
 - and for a third breach within 10 years of receipt of a Caution, referral to Disciplinary Panel with a presumption of expulsion.

31. The Panel bore in mind that the purpose of a disciplinary sanction is not to be punitive, though that may be its effect. The purpose of a sanction is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of RICS as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.
32. The Panel paid careful heed to the advice of the Legal Assessor and to RICS' sanctions guidance. It considered carefully whether any mitigating or aggravating factors were present in this case. The Panel considered the issue of proportionality in weighing up the most appropriate response.
33. The Panel identified the following mitigating factors.
 - The Relevant Person had offered a sincere apology and remorse for his CPD lapse.
 - He indicated that he had undertaken relevant CPD for 2021 but had not recorded it. He explained that the background to this failure, which the Panel accepted, related to significant business pressures which also led to some health issues.
 - He had demonstrated insight into the importance of undertaking and recording CPD and expressed a willingness to comply in future and taken remedial steps to ensure compliance
 - He has engaged with RICS regulatory process and had made admissions to the charge.

34. The Panel considered that the following aggravating factors were present:
- The Relevant Person had previously been sanctioned in respect of CPD breaches on two previous occasions, namely a Caution for 2017 and a Caution and Fine for 2019.
35. RICS is a professional membership organisation and sets standards for its Members as a condition of membership. It is not difficult to record CPD online. Compliance is not optional.
36. The Panel first considered whether to impose a sanction. The Panel concluded that the repeated failure to record CPD was serious and imposing no sanction would be neither proportionate nor appropriate.
37. The Panel went on to consider a further Caution. It concluded, that despite the mitigation the failure could not be described as “minor”. It concluded that a further Caution would not sufficiently reflect the seriousness of this case and adequately protect the public interest.
38. The Panel went on to consider a Reprimand. It paid particular regard to the personal circumstances that lay behind the failure, the remediation undertaken, the insight now shown into the importance of the CPD requirements and concluded, in the light of those that a Reprimand coupled with a condition as to the consequences of a further breach of CPD requirements and a Fine of £500 could adequately reflect the seriousness of this case and adequately protect the public interest.

39. The Panel was mindful that paragraph 21.1 of the Sanctions Policy states that expulsion is likely where there is a third breach of Rule 6 of the Rules of Conduct for members within 10 years of a receipt of a caution for breach of the same rule. However, the Panel considered that, the circumstances of this case were sufficiently extenuating to depart from the presumption of expulsion and that to go beyond a Reprimand, Condition and Fine in combination would be disproportionate, having balanced the aggravating and mitigating factors.
40. The Panel therefore order that Mr Kindred be Reprimanded, given a fine of £500 and be subject to the following condition:
- i. As a condition of continuing membership Mr Kindred is directed to comply with the CPD requirements for the year 2023 by completing and recording his CPD hours by 31 January 2024.
 - ii. As a condition of continuing membership Mr Kindred is directed to comply with the CPD requirements for the next 5 years starting with the CPD requirements for 2023.
 - iii. Unless Mr Kindred has obtained a RICS extension or a RICS exemption from his CPD requirements, failure to comply with either condition (i) or (ii) will result in automatic expulsion from membership, without further reference to a Disciplinary Panel.

COSTS

41. RICS applied for costs in the sum of £3,650 pursuant to Supplement 2 to the Sanctions Policy. The Panel noted that a schedule of costs had been provided to Mr Kindred with the Notice of Hearing. The Panel took account of Mr Kindred's submissions that he had incurred over £4,000 of costs. The Panel considered it was fair and reasonable to award RICS this sum.
42. The Panel directed that Mr Kindred pay the costs of RICS in the sum of £3,650.

PUBLICATION

43. The Panel considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters and agreed that in this case there were no exceptional reasons to diverge from the presumption of publication. This decision will therefore be published on the RICS website.

APPEAL PERIOD

44. Mr Kindred has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with the Rules.
43. In accordance with Rule 166 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of RICS has 28 days, from the service of the notification of the decision, to require a review of this Decision.

